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Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

UNITED STATES OF AMERICA,
v.
Plaintiff,
DANIEL BRIAN BURKE,
Defendant.

No: CR 19-14-M-DLC

**DEFENDANT'S ADDITIONAL
PROPOSED JURY
INSTRUCTIONS**

Burke previously submitted proposed Jury Instructions with the Court on October 22, 2020 (Doc. 182). Additionally, Burke would like to propose a change to Court's proposed instruction T-2.

During the first trial, when the undercover video between IRS Agent Thomas Klepper and Daniel Burke was being played, the video was paused and the cautionary instruction was given, with the Court stating in part, “You are about to hear testimony regarding the manner in which the Baumgardners treated their personal property for state taxation purposes. This evidence will be admitted only for limited purposes. . . .” Tr. Transcript of Agent Klepper, p. 32 (June 2, 2020). The entire instruction was then read.

For this trial, as discussed at the Final Pretrial Conference, Mr. Burke respectfully asks that the cautionary instruction be given at the end of the case.

Consistent with this request, Mr. Burke asks that the first two sentences of the Court’s proposed instruction T-2 be modified. That proposed instruction currently states: “You are about to hear testimony that the defendant committed other acts not charged here. This evidence of other acts will be admitted only for limited purposes.”

Burke respectfully requests that these two sentences should be changed to: “During the undercover video between IRS Agent Thomas Klepper and Daniel Burke, there were statements made about the manner in which the Baumgardners treated their personal property for state taxation purposes. The Court hereby cautions you that this evidence of other acts was admitted only for limited purposes.”

A copy of Mr. Burke's full proposed instruction is attached.

DATED: October 30, 2020

BOONE KARLBERG P.C.

\s\ Matthew Hayhurst
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